IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

I.T.R. No.52 of 1990
Date of decision: 15. 09.2006

Commissioner of Income Tax (Central), Ludhiana.

-----Petitioner

Vs.

M/s O.K. Hosiery Mills, Ludhiana

-----Respondent

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL

Present: Mr. S.K. Garg Narwana, Advocate
for the revenue.

ORDER:

Following questions of law have been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, arising out of its order dated 08.09.1988 in R.A. No.9/Chandi/89 in respect of assessment year 1980-81:-

"1. Whether on the facts and in the circumstances of the case on a proper interpretation of section 35B of the Income-tax Act, 1961, the Appellate Tribunal was right in law iin allowing weighted deduction under section 35B of the following items:-

a) Subscription paid to Hosiery Exporters Association and Export Promotion Council.
b) Salary & Bonus.
c) Salary, Security & Guard.
d) Printing & Stationery.
e) Postage, Telephone & Telegrams.
f) Advertisement."

"2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in allowing weighted deduction u/s 35B in respect of packing credit interest?"

The assessee is a firm engaged in the business of manufacturing, sale and export of hosiery goods. Accounts are maintained on mercantile basis. For the relevant year, the assessee claimed weighted deduction in respect of subscription to hosiery exporters association and to export promotion council, salary and bonus, salary, security and guard, printing and stationery, postage, telephone and telegrams and advertisements etc.

The Assessing Officer disallowed the said claim, but the CIT(A) allowed the same, which was upheld by the Tribunal. The Tribunal also allowed weighted deduction under Section 35B of the Income-tax Act, 1961 (for short, "the Act") in respect of packing credit interest.

The issue has been examined by the Hon'ble Supreme Court of India in ***Commissioner of Income-tax v. Hero Cycles Pvt. Ltd. and others*** (1997) 228 ITR 463, wherein it was held that deduction is permissible if expenditure is laid out wholly and exclusively for the purposes mentioned in clause (b) of section 35B (1). It was observed:-

> "The Commissioner of Income-tax) Appeals as well as the Tribunal allowed this claim of the assessee without examining the facts of this case. The deduction is permissible if the expenditure is laid out wholly and exclusively for the purposes mentioned in clause (b) of section 35B(1). It is for the assessee to prove that the entire expenditure involved was exclusively for the purposes mentioned in clause (b) of section 35B(1). The Tribunal has also to give a finding as to the entitlement of the assessee with reference to the particulars of clause (b) of section 35B(1). The facts have to be found out and the law has to be applied to those facts. It appears that generally a certain percentage of the claim has been allowed under section 35B without adverting to any of the sub-clauses of clause (b) of section 35B(1). Under those circumstances, we think it fit to set aside the order of the Tribunal and send the matter back to the Tribunal to dispose of it after examining the facts afresh. The appeals are

allowed. The order of the High Court as well as the appellate order of the Tribunal is set aside. There will be no order as to costs."

The Assessing Officer disallowed the claim for weighted deduction on the ground that the same is admissible only if the expenditure is incurred for the purpose of export and not admissible only on the ground that it was part of business expenditure.

The CIT (A) allowed the claim for weighted deduction without recording any finding that the expenditure was relatable exclusively for the purposes mentioned in clause (b) of Section 35B. The Tribunal also upheld the claim of the CIT (A) without any finding that the expenditure being relatable to clause (b) of Section 35B.

In view of the judgment of the Hon'ble Supreme Court, the view taken by the CIT(A) as well as by the Tribunal cannot be upheld.

The question is answered in favour of the revenue and against the assessee.

(ADARSH KUMAR GOEL)
JUDGE

September 15, 2006
ashwani

(RAJESH BINDAL)
JUDGE